Long-Term Care in Florida:
A Review of the Task Force Report

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In May 2000, the Florida Legislature established the Task Force on Availability and Affordability of Long-Term Care. The task force was chaired by Lieutenant Governor Frank Brogan and mandated to a wide range of issues related to cost-effectiveness of Florida’s current long-term care services, the quality of care currently provided in nursing homes and the impact of lawsuits against nursing homes on the costs and availability of care. The task force was staffed by the Florida Policy Exchange Center on Aging which completed a report with recommendations addressing each of the three main areas of task force activity.

After several months of research and analysis, the staff found that Florida does not have the kind of long-term care system best designed to meet the needs of its frail elderly population in an efficient and just manner. Frail elderly persons overwhelmingly prefer to receive care in their own homes or in as home-like a congregate setting as possible. And research has increasingly shown that the providers of these services also know how to deliver them in an efficient and responsive manner to even the most seriously impaired persons. In Florida, however, over 85 percent of all public spending for long-term care goes to nursing homes and only 14 percent is for home- and community-based services (HCBS). One measure of how much the state has lost in the development of a balanced, user responsive long-term care system is that in 1983 only 77 percent of all public spending on long-term care went to nursing home care when Florida was recognized as a model state in the provision of home-based care.

Over the last ten years, however, funding for home- and community-based alternatives to nursing homes has stagnated and actually declined, while funding for the Medicaid nursing home program increased by over 100 percent. Florida lags far behind many states in per capita spending of Medicaid money for home- and community-based services for older adults. As a result, Florida, where the 65+ population will grow from 18.5 percent to over 25 percent of the population in 20 years, has lost its status as an innovator in long-term care and slipped behind several other states in the pursuit of a balanced system of care designed to reduce dependency on nursing homes. The overall quality of care in our long-term care system has been diminished by the relative decline in the availability of home- and community-based services over the last ten years, and this decline will continue unless decisive action is taken now, and sustained for several years, to change the direction of long-term care policy.

The staff report includes several recommendations to expand community-based programs, including in-
Florida ranks 40th on dignity citations and 39th on assessment citations. Florida was among the top 20 states and received fewer violations for quality of care, accidents, accident prevention, pressure sores and ADL services. While citations for pressure sores were lower than the national average, the trend between 1993 and 1999 has remained relatively stable, and Florida is in the middle of states on this citation. However, the percent of Florida residents receiving special skin care, like the rest of the nation, has been increasing, and Florida remains one of the top states in providing this service.

Between 1993 and 1999, citations in Florida for nursing staff deficiencies have increased from 5.6 percent in 1993 to a high of 13.9 percent in 1998, and a slight decrease in 1999.

The average number of deficiency citations per facility has somewhat increased in Florida and remains higher than the rest of the nation.

The percent of facilities with no deficiency citations in Florida is lower than the rest of the nation and has remained so since 1996.

The percent of residents in Florida with severe conditions, such as contractures, appears to be increasing from a low of 16.5 percent in 1993 to 18.3 percent in 1999. While the overall rates of residents with contractures are increasing nationwide, rates in Florida remain slightly below the nationwide averages.

The percent of residents with physical restraints in Florida has significantly decreased since 1993 and was lower (7.4 percent FL vs. 10.9 percent US) than the national average in 1999.

In response to these findings, the staff recommended the following:

- Establish and pay for new mandated levels of direct care providers.
- Adopt the HCFA minimum staffing levels for CNA, LPN + RN, and RN hours per resident per day. [CNA level at 2.0 hours per resident per day; nursing levels (LPN and RN) at 0.75 hours per resident day; RN level at 0.20 hours per resident per day.]
- Improve and increase the training of direct care professionals and non-professional staff.
- Improve the clinical care by increasing the presence of primary care providers as advanced practice nurses, physicians assistants, geriatric clinic nurse specialists and medical directors.
- Increase funding for paid staff in the Ombudsman Program to allow expansion of program. Ombudsman should study the feasibility of sharing complaints and resident satisfaction information with facilities on an ongoing basis to improve quality and resident satisfaction with care. A report is due in January 2001. There should be one or two ombudsmen in each nursing home.
- Mandate a Risk Management (RM) Program as a part of the quality assurance program.

- Create one system to rate nursing homes. Ensure implementation of Gold Seal Program and establish a mandatory rating system for remaining facilities. Facilities should report the same information as is required by Gold Seal, including staffing, financial information, training of staff, stability of key staff, overall turnover rates, citations by year for the last three years, etc.

- In order to help pay for increases in state expenditures to increase CNA salaries, Chapter 400.25 should be amended to provide for mandatory fines for violations. Fines collected would go into a trust fund to benefit the CNA Living Wage statute.
- A Class One violation would have a fine of $25,000 per occurrence.
- A Class Two violation would have a fine of $7,500 per occurrence.
- A Class Three violation would have a fine of $1,500 per occurrence.

These recommendations, which are only a fraction of the number in the report, reflect the effort to create a balance between carrot and stick approaches to improving the quality of care in Florida's nursing homes.

The third area addressed by the task force is the impact of lawsuits on the quality and affordability of nursing home care and the financial status of nursing homes. The staff reported the following major findings:

The frequency and severity of claims are increasing rapidly:
- Florida has three times as many claims as the rest of the nation.
- The average size of a nursing home litigation claim in Florida was $278,637 in 1999 which is 250 percent more than the average claim in the other 49 states ($112,351).
- The average loss cost per annual occupied bed in Florida was $6,283 in 1999 which is 776 percent (8 times) more than the average loss cost in the other 49 states ($809). Every year from 1995-1999, on average, 54 percent of nursing homes in Hillsborough County have had at least one lawsuit. The size of the cases (for those that were not sealed) went from an average of $311,393 in the early 1990's to $410,294 in the late 1990's.

The allegations in nursing home lawsuits are for serious and not frivolous causes:
- 60 percent of all lawsuits include allegations that involve pressure sores; 57 percent allege falls; 25 percent allege abuse and/or neglect; 45 percent allege dehydration and/or weight loss. These allegations are not frivolous, yet there isn't data available to determine if the incidents are due to poor care or inevitable health decline (i.e., 95 percent of cases are settled out of court).
- In multivariate analyses, bed size was the only significant variable of a number of structural, case-mix and quality measures that significantly predicted lawsuit activity.
The courts are acting expeditiously:
- Nine percent of nursing homes in Florida are either entirely without liability insurance now or will be "going bare" by February 1, 2001. This is up from one percent in June.
- The majority of the 40 homes lost or dropped coverage since July 2000. 29 percent are reportedly self-insured (new AHCA unpublished data, December 2000).
- Most facilities experienced a reduction in the amount of insurance coverage—deductibles increased for 69 percent of the facilities and decreased for 6 percent. Policy limits decreased for 44 percent. Liability coverage changed from occurrence to claims-made (a considerable reduction in the scope of coverage) for 13 percent of the facilities.
- Assisted Living Facilities (ALF), who are required by statute to hold liability insurance, are being told by insurers to give up their Extended Congregate Care or Limited Nursing Service licenses in order to receive liability insurance.
- ALF’s are also required to hold an ECC or LNS license to accept residents who are on the Medicaid Waiver. Without an ECC or LNS license, these ALF’s will have to discharge their residents, and nursing homes will be their only alternative.
- Continuing Care Retirement Communities (CCRC) experienced a 74 percent increase in their premiums in 2000 (the average increase in 1998 and 1999 was 15 percent) and are required to have 30 percent of their operating costs (including expected liability insurance costs) set aside in a reserve fund.
- The last admitted insurance carrier (one that is regulated by the Department of Insurance) has announced that it is ending its liability coverage for long-term care facilities in February 2001.

According to the staff report, limiting costly litigation will be achieved through a set of changes that will both ensure access to the court system for frail elders and their families and limit the ever-increasing amount of damages. These recommendations replace the civil cause of action in 400.023 with a new Long-Term Facility Negligence statute. Key provisions are:
- The resident and his/her representative have a cause of action (based on negligence) that remains after death and does not require there to be a survivor.
- Add-on attorney fees, for injury or death, are repealed in Chapter 400, but in claims involving injury or death, a percentage of the award is recoverable for attorney’s fees. For non-injury resident rights cases, a cap of $10,000 in attorney fees has been added.
- Significant incentives for arbitration for both claimants and defendants.
- Caps on claims (noneconomic damages + attorney’s fees) are higher than the current average claims reported by Aon and by staff research and are not capped if the claimant refuses arbitration.
- Unlike medical malpractice claims, in cases where both parties agree to arbitrate, there is no provision to reduce the award based on capacity to enjoy life.
- Provides for a managed risk agreement between provider and resident that is approved by a medical doctor and properly maintained and protects the facility from liability from the consequences of a decision to refuse or modify care.
- Provides for the protection of AHCA approved risk management or quality assurance programs and records and surveillance records (with regard to who pays for the surveillance) from discovery.
- Refers all cases where punitive damages are awarded in a jury trial to the local state attorney’s office.

Several of the staff recommendations related to quality care initiatives and limiting litigation were controversial. The trial lawyers were unhappy with most of the litigation-related recommendations which they felt would unfairly restrict the access of nursing home residents to the courts, and the nursing home providers felt that the proposed monetary caps were too high and some of the quality of care recommendations were too stringent unless accompanied by substantial budget increases. Given the deep division within the task force, the members decided to release the staff report and critical responses to it by task force members to the Legislature by the end of January 2001 without a formal vote by the task force on the recommendations. This approach would permit all the research and analysis done for the task force over a six-month period to be used by the Legislature as needed and by the media to help inform the public about a number of complex long-term care policy issues. The saliency of these issues will only increase over the next several years as Florida’s already huge population age 65+ grows, and the demand for long-term care services increases.

Finally, it should be noted that the findings and recommendations presented here are just a few of those included in the full report which can be found on the Policy Center’s website at http://www.fpeca.usf.edu.

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